

**GENERAL TERMS AND CONDITIONS FOR
COMMERCIAL PURCHASES**

**WESTINGHOUSE SAVANNAH RIVER CO., LLC
SAVANNAH RIVER SITE
AIKEN, SC 29808**

**Change Bar indicates new article, a change in
application, or that text of Article has changed
from Revision 2**

APPLICABLE TO ALL TRANSACTIONS

<u>Article</u>	<u>Page No.</u>
1. DEFINITIONS.....	1
2. RESOLUTION OF DISPUTES.....	1
3. ORDER OF PRECEDENCE.....	2
4. ADMINISTRATION AND ASSIGNMENT.....	2
5. ACCEPTANCE OF TERMS AND CONDITIONS ..	2
6. WARRANTY	2
7. NEW MATERIALS	2
8. TITLE AND RISK OF LOSS	3
9. PAYMENT.....	3
10. PAYMENT BY ELECTRONIC FUNDS TRANSFER.....	3
11. TAX WITHHOLDING FOR NONRESIDENTS	4
12. COMPLIANCE WITH LAWS	4
13. TERMINATION FOR CONVENIENCE	4
14. TERMINATION FOR CAUSE	4
15. BANKRUPTCY	5
16. TAXES	5
17. CHANGES	5
18. SUSPENSION	5
19. SUPPLIER'S LIABILITY FOR FINES AND PENALTIES	5
20. UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)	5
21. FOREIGN NATIONALS	6
22. PRICE-ANDERSON AMENDMENTS ACT	6
23. INCORPORATION BY REFERENCE.....	7
(1) Equal Opportunity	
(2) Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era	
(3) Affirmative Action for Workers with Disabilities	
(4) Nuclear Hazards Indemnity Agreement	

1. DEFINITIONS

The following terms shall have the meanings below:

- A. Government means the United States of America and includes the U.S. Department of Energy

(DOE) or any duly authorized representative thereof.

- B. Company means Westinghouse Savannah River Company, LLC (WSRC), under its prime contract with DOE.
- C. Seller means the person or organization that has entered into this Agreement/Subcontract.
- D. Item includes "commercial item", "commercial component", and "service" as defined in FAR 52.202-1.

2. RESOLUTION OF DISPUTES

- A. Seller shall not be entitled to and neither the Company nor the Government shall be liable to the Seller or its lower-tier suppliers or subcontractors in tort (including negligence), or contract, or otherwise, except as specifically provided in this Agreement/Subcontract.
- B. The Seller and the Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement/Subcontract through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of Alternative Disputes Resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Aiken, South Carolina. The mediator or arbitrator shall allocate cost, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows:
- (1) Any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States District Court for the District of South Carolina, Aiken Division
- (2) Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in State Court in Aiken County, South Carolina.
- C. The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of South Carolina.
- D. There shall be no interruption in the prosecution of the work, and the Seller shall proceed diligently with the performance of this Agreement/Subcontract pending final resolution of any dispute arising under this Agreement/Subcontract between the parties

hereto or between the Seller, and its subtier Agreement/Subcontracts.

3. ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence:

- A. Face of the Agreement/Subcontract
- B. Special terms and conditions
- C. Item description
- D. General terms and conditions

4. ADMINISTRATION AND ASSIGNMENT

The Company shall make payments under this Agreement/Subcontract from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. This Agreement/Subcontract may be assigned by the Company to DOE or its designee, and in case of such transfer and notice thereof to the Seller, the Company shall have no further responsibilities hereunder. The Seller shall not assign rights or obligations to third parties without the prior written consent of the Company. However, the Seller may assign rights to be paid amounts due or to become due to a financing institution if the Company is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of the Company against the Seller.

5. ACCEPTANCE OF TERMS AND CONDITIONS

- A. Seller, by signing this Agreement/Subcontract or delivering the items identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement/Subcontract incorporated by reference or attachment. The Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement/Subcontract that are different from or in addition to those mentioned in this document. Failure of the Company to enforce any of the provisions of this Agreement/Subcontract shall not be construed as evidence to interpret the requirements of this Agreement/Subcontract, nor a waiver of any requirement, nor of the right of the Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement/Subcontract.
- B. If any part of the Work is subcontracted, the Seller is responsible for having the subcontracted Work comply with the terms of this Agreement/Subcontract.

6. WARRANTY

- A. Seller warrants that items delivered under this Agreement/Subcontract shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of this Agreement/Subcontract. The warranty shall begin upon receipt of conforming items and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if the Seller is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if the Seller is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or re-perform services at Seller's election. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. Company shall notify Seller of such nonconformity within a reasonable time after discovery, and Seller shall notify Company of whether it chooses to make repairs or replacements within three (3) working days after Company's notice of nonconformity. If repair or replacement or re-performance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or re-procure the services at Seller's expense.
- B. Latent Defects. In the event the Seller becomes aware of any latent defect(s) in any item(s) furnished under this Agreement/Subcontract, the Seller shall promptly notify the Company Procurement Representative. This notice shall provide at a minimum the following information:
 - (1) full description of the item(s);
 - (2) manufacturer, model and/or part number;
 - (3) complete description of the latent defect;
 - (4) impact of the defect on the operation of the item(s);
 - (5) action(s) to be taken by the Company relative to return, re-fit, repair, etc.;
 - (6) date of purchase by the Company; and,
 - (7) applicable Company Agreement-Subcontract number.

7. NEW MATERIALS

Unless otherwise specified in this Agreement/Subcontract, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. The Supplier shall not provide material, or equipment that contains material that is known to be suspect or counterfeit.

8. TITLE AND RISK OF LOSS

- A. Unless otherwise provided in the Agreement/Subcontract, title to the items purchased under this Agreement/Subcontract shall pass directly to the Government upon, and the risk of loss or damage to the items shall remain with the Seller until and shall pass to the Company upon:
- (1) If F.O.B. Shipping point Completion of delivery to the carrier and any loading by the Seller.
 - (2) If F.O.B. Destination: Completion of delivery or commencement of unloading by the Company at the delivery point.
- B. However; (1) if the Purchase Order provides for formal acceptance of any items by the Company, then title to such items shall pass directly to the Government upon such formal acceptance; and (2) the title and risk of loss or damage to items that are nonconforming shall remain with the Seller until acceptance of the items by the Company as conforming.

9. PAYMENT

- A. Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Seller indicates. Credit and discount periods shall be computed from the date such invoice is so payable to the date WSRC's check is mailed or, for Electronic Funds Transfer (EFT), the specified payment date. Notwithstanding anything herein, WSRC shall be entitled at any and all times to set off against any amounts payable at any time by WSRC hereunder any amount owing from Seller to WSRC under this Order or other orders with Seller.
- B. Overpayments. If Seller becomes aware of a duplicate invoice payment or that WSRC has otherwise overpaid on an invoice payment, the Seller shall immediately notify WSRC and request instructions for disposition of the overpayment.

10. PAYMENT BY ELECTRONIC FUNDS TRANSFER

- A. Methods of Payment:
- (1) All payments by WSRC under this Order shall be made by Electronic Funds Transfer (EFT) except as provided in Paragraph A.2 of this Provision. As used in this provision, the term "EFT" refers to the funds transfer

and may also include the payment information transfer.

- (2) In the event WSRC is unable to release one or more payments by EFT, Supplier agrees to either:
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request WSRC to extend payment due dates until such time as WSRC makes payment by EFT.
- B. Mandatory Submission of Supplier's EFT Information.
Supplier is required to provide WSRC with the information required to make payment by EFT. Supplier shall provide this information directly to the office designated in this Order, on forms provided by WSRC, no later than 15 days after award. If not otherwise specified in this Order, the payment office is the designated office for receipt of Supplier's EFT information. In the event that the EFT information changes, Supplier shall be responsible for providing the updated information to the designated office.
- C. Mechanisms for EFT Payment.
WSRC may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.
- D. Suspension of Payment.
- (1) WSRC is not required to make any payment under this Order until after receipt, by the designated office, of the correct EFT payment information from Supplier. Until receipt of the correct EFT information, any invoice or subcontract financing request shall be deemed not to be a proper invoice for the purpose of payment under this Order.
 - (2) If the EFT information changes after submission of correct EFT information, WSRC shall begin using the changed EFT information no later than 30 days after its receipt by the designated office. However, Supplier may request that no further payments be made until the updated EFT information is implemented by the payment office.
- E. Payment Information.
On the day payment on Supplier's invoice is due, WSRC will issue instructions to its bank to transfer payment to Supplier, and will also send a FAX to Supplier explaining the details to support the payment.
- F. Liability for Uncompleted or Erroneous Transfers.

- (1) If an uncompleted or erroneous transfer occurs because WSRC used the Supplier's EFT information incorrectly, WSRC remains responsible for --
 - (i) Making a correct payment; and
 - (ii) Recovering any erroneously directed funds.
- (2) If an uncompleted or erroneous transfer occurs because Supplier's EFT information was incorrect, or was revised within 30 days of WSRC release of the EFT payment transaction instructions to the bank, and;
 - (i) If the funds are no longer under the control of the payment office, WSRC is deemed to have made payment and the Supplier is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, WSRC shall not make payment and the provisions of paragraph D shall apply.

11. TAX WITHHOLDING FOR NONRESIDENTS

- A. Withholdings required by section 12-8-550 do not apply to payments on orders for tangible personal property when those payments are not accompanied by services to be performed within the state of South Carolina.
- B. Under Title 12 of the Code of Laws of South Carolina, section 12-8-550, two (2) percent of each and every payment made to Suppliers and Subcontractors who are nonresidents of the State of South Carolina and are conducting a business or performing personal services of a temporary nature carried on within South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where an order or a subcontract exceeds or could reasonably be expected to exceed ten thousand dollars (\$10,000.00) WSRC will withhold as required by law.
- C. Under Title 12 of the Code of Laws of South Carolina, section 12-8-540, seven (7) percent (five (5) percent for corporations) of each and every payment of rentals or royalties to subcontractors who are nonresidents of the State of South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where the payments amount to twelve hundred dollars (\$1,200.00) or more a year. WSRC will withhold as required by law.
- D. The above withholdings will not be made provided the Supplier presents the affidavit of registration with the South Carolina Department

of Revenue or the South Carolina Secretary of State's Office, or proof of having posted the appropriate bond with the South Carolina Tax Commission.

12. COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations and such compliance shall be a material requirement of this Agreement/Subcontract.

13. TERMINATION FOR CONVENIENCE

The Company may, in its sole discretion, terminate the Agreement/Subcontract, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller a written notice of termination. Upon receipt of a notice of termination, the Seller shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Seller and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Seller for termination at will by the Company.

14. TERMINATION FOR CAUSE

- A. The Company may terminate this Agreement/Subcontract for cause, in whole or in part, if the Seller fails to comply with any of the terms of this Agreement/Subcontract, or fails to provide adequate assurance of future performance. In that event, the Company shall not be liable for any amount for items not accepted.
- B. If this Agreement/Subcontract is terminated for cause, the Company may require Seller to deliver to the Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Agreement/Subcontract. The Company shall pay the agreed-upon price for completed items delivered and accepted. The Company and Seller shall agree on the amount of payment for all other deliverables.
- C. Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence, including but not limited to acts of

God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of Seller's suppliers at any tier. However, the delays of Seller's suppliers at any tier must be proved to be beyond the control of both Seller and its suppliers and without fault or negligence of either

- D. The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under this Agreement/Subcontract.

15. BANKRUPTCY

If the Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Company Agreement/Subcontract Administrator responsible for administering this Agreement/Subcontract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the Agreement/Subcontract numbers for which final payment has not been made.

16. TAXES

Seller shall not collect an increment for South Carolina sales or use tax from the Company for the items provided under this Agreement/Subcontract beyond such taxes paid by the Seller to its suppliers. The Agreement/Subcontract price includes all applicable federal, state, and local taxes and duties.

17. CHANGES

The Company reserves the right to make changes within the general scope of this Agreement/Subcontract by issuance of a unilateral change order, or by a bilateral modification to this Agreement/Subcontract. Such changes may include, without limitation, changes in (1) the description of the items; (2) the quantities of items ordered; (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection, or acceptance. The Seller shall promptly comply with any such change made by the Company. If any change affects the cost of or the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the Agreement/Subcontract shall be made by the parties in a bilateral modification to this Agreement/Subcontract.

18. SUSPENSION

The Company may, for any reason, direct the Seller to suspend performance of any part of or all of the

performance of this Agreement/Subcontract for an indefinite period of time. If any such suspension significantly delays the progress of or causes the Seller additional direct expenses in the performance of the Agreement/Subcontract, not due to the fault or negligence of the Seller, the compensation to the Seller shall be adjusted by a modification to this Agreement/Subcontract on the basis of the additional direct expenses of the Seller to perform the Agreement/Subcontract and the time of performance of the Agreement/Subcontract shall be extended by the actual duration of the suspension. Any claim by the Seller for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Seller to resume the performance of the Agreement/Subcontract.

19. SUPPLIER'S LIABILITY FOR FINES AND PENALTIES

- A. Seller is liable to WSRC for all fines and penalties assessed by any governmental entity against WSRC or DOE as a result of Seller's failure to perform its work under this Agreement/Subcontract in compliance with the requirements of this Agreement/Subcontract.
- B. Seller shall indemnify and hold harmless WSRC and DOE from and against any and all claims, demands, actions, causes of action, suits, damages, expenses, including attorney's fees, and liabilities whatsoever resulting from or arising in any manner on account of the assessment of said fines and penalties against WSRC or DOE.

20. UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

In the performance of this order, the Supplier is responsible for complying with the following requirements and for flowing down all requirements to lower-tier suppliers.

- A. The Supplier ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE M 471.1-1, Chapter II). Supplier may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Order only to employees who are citizens of the United States.
- B. The Supplier ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE M 471.1-1, Chapter II. Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be specified in a Computer

Protection Plan approved by the WSRC Computer Security organization. Adherence to the Plan is required during the performance of this Order.

- C. Material or data containing UCNI shall be disposed of in a manner as described in DOE M 471.1-1, Chapter II. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Supplier disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Supplier may return the UCNI matter to the STR for disposition, with the prior approval of the STR.
- D. The supplier shall report to the WSRC Security Office or the WSRC Purchasing Representative any incidents involving the unauthorized disclosure of UCNI.
- E. If performance of work under this order results in the generation of unclassified documents that contain UCNI, the Supplier shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The suppliers Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.
- F. If the supplier has a formally designated Classification Officer, the Classification Officer-
 - (1) Serves as a Reviewing Official for information under his/her cognizance;
 - (2) Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and lower-tier suppliers and maintains a current list of all Reviewing Officials; and
 - (3) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- G. If the supplier has no formally designated Classification Officer, the supplier submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.

21. FOREIGN NATIONALS

As used in this Article, the term "Foreign National" is defined to be a person who was born outside the jurisdiction of the United States, is a citizen of a foreign government and has not been naturalized under U.S. law.

- A. The Subcontractor shall obtain the approval of WSRC, in writing, prior to any visit to a DOE or WSRC facility by any Foreign National in connection with work being performed under this Order, in accordance with the requirements of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially-sponsored attendance at a DOE or WSRC event off-site from the DOE/WSRC facility, but does not include off-site events and activities open to the general public. Subcontractors should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the WSRC Purchasing Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the WSRC Purchasing Representative.
- B. In addition, the Subcontractor shall obtain the approval of the WSRC Purchasing Representative, in writing, prior to the employment of, or participation by, any Foreign National in the performance of work under this Subcontract or any lower tier Subcontract at off-site locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3
- C. In the performance of off-site work, Foreign Nationals only incidentally involved with a WSRC Subcontract, and who have no knowledge that their activities are associated with WSRC Subcontract work, are exempt from the above.

22. PRICE-ANDERSON AMENDMENTS ACT

- A. The Department of Energy has promulgated Procedural Rules (10 CFR 820), Nuclear Safety Management Rules (10 CFR 830), and Radiation Protection Rules (10 CFR 835) in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern

the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules will provide a basis for the assessment of civil and criminal penalties under the PAAA.

- B. This Order is subject to the requirements of the above rules if the performance of work involves conducting activities (including providing items and services), on or off the Savannah River Site, that affect, or may affect, the safety of DOE nuclear facilities.

C. Indemnification of WSRC

To the extent permitted by law, the Supplier assumes full responsibility and shall indemnify, save harmless, and defend WSRC and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Supplier, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The Supplier's obligation to indemnify and hold harmless shall expressly include attorneys fees and other reasonable costs of defending any action or proceeding instituted under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq. A copy of the implementing regulations at 10 CFR Sections 820, et seq., will be made available to the Supplier upon request.

FAR clauses may be accessed electronically at <http://www.arnet.gov/far>. DEAR clauses can be found at <http://professionals.pr.doe.gov>.

23. INCORPORATION BY REFERENCE

This Agreement/Subcontract incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means the Company Procurement Representative. Government means the Company (except in instances when it is not applicable or appropriate).

The following clauses are incorporated by reference:

- (1) FAR 52.222-26, Equal Opportunity (FEB 1999)
- (2) FAR 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998)
- (3) FAR 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998)
- (4) DEAR 952.250-70, Nuclear Hazards Indemnity Agreement (JUN 1996)